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EXAMINER	
JARRETT, SCOTT L	
ART UNIT	PAPER NUMBER
3624	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/646,890	WATANABE ET AL.	
	Examiner	Art Unit	
	SCOTT L. JARRETT	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 October 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *23 August 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This Non-Final Office Action is in response to Applicant's request for continued examination and amendments filed October 13, 2009. Applicant's amendment amended claims 1-4, 6-8, 10-15 and added new claim 16. Currently claims 1-16 are pending.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 13, 2009 has been entered.

Response to Amendment

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

The 35 U.S.C. 101 rejection of claims 1-9 and 13-15 is withdrawn in response to Applicant's amendments to the claims.

Response to Arguments

4. Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

Further it is noted that the applicant did not challenge the officially cited facts in the previous office actions therefore those statements as presented are herein after prior art. Specifically it has been established that it was old and well known in the art at the time of the invention: surveys are presented to respondents according to conditions designating desirable respondents from a population of potential respondents; and computer programs have numerical limits as to how much data they can store in a data structure such as a lit and that such fixed limits are a predetermined maximum.

Title

5. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Method of Creating Predetermined Elective Questions from Free Reply Questions in a Polling System and Method.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 6 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: what method steps, if any, are performed when the determination is confirmed to be incorrect (claims 6 and 15) and what steps, if any, are performed if the first determined if the predetermined reply option and the free reply are not substantially the same.

For example as currently recited, claim 15 would read as follows when the determining is incorrect (i.e. the free reply and predetermined reply option are not substantially the same).

A polling method according to claim 5, further comprising confirming, performed by the processing server if the first said determining determines that the said free reply input by the first respondent and said predetermined reply option are substantially the same <*method steps end when it is determined that they are not the same*>.

8. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claim 9, claim 9 is recites the limitation "said iterating terminated" in claim 1 or claim 2. There is insufficient antecedent basis for this limitation in the claim.

Additionally examiner notes claim 9 appears to contain a grammatical error. Examiner interpreted the claim to read controlling which terminal the second questioning is performed for the purposes of examination. Appropriate correction required.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

10. Claim 16 is rejected under 35 U.S.C. 102(e) as being anticipated by Mizrahi et al., U.S. Patent Publication No. 2006/0155513.

Regarding Claims 1, 10, 11 and 12 Mizrahi et al. teach a system and method for conducting a poll (survey, questionnaire, etc.) on a respondent group including at least one or more first/second respondents (Abstract; Figure 1) comprising:

- presenting an input form with a question to a first respondent, by the system (terminal first questioning; Paragraphs 4-6; Figure 2);

- obtaining and storing a free reply (open question, free text, free form, free input, unstructured, feedback, comment, etc; no predefined) by accepting input into the input form by a first responded of an unguided reply to the question (open questions; Paragraphs 6, 24, 57, 86, 111);

- closing (completing, submitting, storing, saving, etc.) the input form presented to the first respondent (Paragraphs 98, 184; Figure 2);

- presenting an input form with the question and the stored free reply to a second respondent after storing the free reply by the system (terminal; Paragraphs 44, 55, 57, 59, 61, 86, 117);

- accepting a choice of the stored free reply as a replay to the question on the input form presented to the second respondent (Paragraphs 51, 55, 56, 59, 85, 117, 123).

Regarding Claim 2 Mizrahi et al. teach a system and method further comprising:

- obtaining and storing an elective reply (closed question, fixed, multiple choice, etc.) by accepting from a second respondent selection of a reply presented to the second respondent (closed questions; Paragraphs 4, 5, 40, 78, 83);

- compiling, by repeating, the first questioning, obtaining and storing a first reply; presenting an elective reply and the second storing and collecting and compiling elective and free replies from the respondent group (Paragraphs 28, 40, 51, 56, 83, 143).

Regarding Claim 3 Mizrahi et al. teach a polling system and method further comprising: a first determining, by the system (server) to determine whether a free reply input by a first respondent and a predetermined option presented are substantially the same (match; Paragraphs 72, 139, 141, 142, 161), the presenting further presenting at least one predetermined reply option (Paragraphs 44, 51, 55, 59, 85, 86).

Regarding Claim 4 Mizrahi et al. teach a polling system and method wherein the first storing stores the free reply as a reply option to the question, upon the first determining having determined that the free reply by the first respondent and the predetermined reply are not substantially the same (Paragraphs 72, 139, 141, 142, 161).

Regarding Claim 5 Mizrahi et al. teach a polling system and method wherein upon the first determining determining that the free reply input by the first responded is substantially the same as the predetermined reply cthe compiling compiles the free reply as an elective reply made by selection of the predetermined reply (Paragraphs 28, 40, 51, 56, 83, 123, 143).

Regarding Claim 7 Mizrahi et al. teach a polling system and method further comprising accepting settings on conditions for designating at least one or more respondents wherein the first questioning is presented to the one or more first

respondents who have been extracted (identified, matched, etc.) based on the conditions (Paragraphs 30, 35, 37, 40, 45, 65, 70).

Regarding Claim 8 Mizrahi et al. teach a polling system and method further comprising:

- a second determining increasing a count of reply options to the questions when a free reply is stored and determining whether the reply count has reached a predetermined maximum value (goal, target, rating; Paragraphs 25, 27, 34, 40, 71, 98, 160);

- storing correlatively with the question options that the presenting has presented to the second respondents (Figure 2); and

- resurveying upon determining that the reply options count has reached a maximum value, extracting based on data stored by second respondents who have made elective replies from options numbering a count that is a predetermined minimum or less and presenting the second respondents with the question (Paragraphs 10, 98, 124, 160).

Regarding Claim 9 Mizrahi et al. teach a system and method further comprising

- repeating the obtaining and storing of a free reply (Figure 2); and

- controlling which terminal is iterated and presenting the second questioning is performed (Paragraphs 30, 35, 37, 40, 45, 65, 70).

Regarding Claim 14 Mizrahi et al. teach a polling system and method further comprising determining whether a free reply input by a first respondent and a predetermined reply option presented are substantially the same (match; Paragraphs 72, 139, 141, 142, 161) and further presenting at least one predetermined reply option (Paragraphs 44, 51, 55, 59, 85, 86).

Regarding Claim 16 Mizrahi et al. teach a polling system comprising (Figure 1):

- a terminal (computer, Figure 1, Element 104) presentation a question to a first respondent, obtaining a free reply by accepting an unguided replay ("open questions", open-ended, free form, opinion, free text, comment box, not predetermined, etc.; Paragraphs 6, 117, 123, 124); and

- a processing server storing the free reply as a reply option to be presented to a second responded by the terminal (Paragraphs 11, 44, 51, 55, 59, 85-87, 161; Figures 1-2).

It is noted that the recitation of the intended use of the stored free reply merely represents non-functional descriptive material are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific intended use of the stored free reply. Further, the structural elements remain the same regardless of the specific intended use of the stored free reply. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack, 703*

F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claims 6, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizrahi et al., U.S. Patent Publication No. 2006/0155513 as applied to claims 1-5, 7-12, 14 and 16 above, and further in view of official notice.

Regarding Claims 6 and 15 Mizrahi et al. teach a polling system and method further comprising confirming upon the first determining having determined that the free reply by the first respondent and the predetermined reply option are substantially the same (Paragraphs 72, 139, 141, 142, 161).

Mizrahi et al. does not expressly teach accepting the first respondent confirmation as to whether or not the determination is correct and wherein the determining is correct carrying out the compiling as claimed.

Official notice is taken confirming that a respondents (user) answer is correct is old and well known.

It would have been obvious to one skilled in the art at the time of the invention that the polling system and method as taught by Mizrahi et al. would have benefited from confirming a respondents responses in view of the teachings of official notice, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Regarding Claim 13 Mizrahi et al. teach a polling system and method comprising:

- displaying a question;

- displaying at least one or more predetermined reply options to the displayed question (elective question, closed question, multiple choice, etc.) and accepting selection of any reply options *or* input of an unguided reply to the question on an input form;

- determining whether a free reply has been entered;

- determining whether the entered free reply and any of the predetermined reply options will be substantially the same before the input of the free reply has finished;

- determining that the free reply and a predetermined reply option will be substantially the same input of the free reply *or* the predetermined reply option; and closing the input form.

Mizrahi et al. does not expressly teach determining whether the entered free reply and any of the predetermined reply options will be substantially the same before the input of the free reply has finished as claimed.

Official notice is taken that utilizing type-ahead, auto-completion, auto-fill and/or predictive text to determine while an input to a form (field, text, survey, etc.) matches (is the same) of a predetermined text (response, answer, etc.) is old and very well known technique in form completion on a computer system wherein such auto-complete features reduce the amount of typing (input) a user has to complete, the system/computer auto-filling/completing the remainder of the field/form based on the partial text already input by the user. Support for this officially cited fact can be found in at least van den Oord et al., U.S. Patent Publication No. 2003/0041147, Paragraph 14.

It would have been obvious to one skilled in the art at the time of the invention that the polling system and method as taught by Mizrahi et al. would have benefited from determining whether the entered free reply and any of the predetermined reply options will be substantially the same before the input of the free reply has finished (auto-fill/complete) in view of the teachings of official notice, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SCOTT L. JARRETT whose telephone number is (571)272-7033. The examiner can normally be reached on Monday-Friday, 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott L Jarrett/
Primary Examiner, Art Unit 3624